## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS EASTERN DIVISION

Judy Sosa; Myrna Crutcher, Roberta Tarozzi; Wendy Farris; Geraldine Hartman;

**Plaintiffs** 

v.

Indevus Pharmaceuticals, Inc., F/K/A **Interneuron Pharmaceuticals, Inc.**; Wyeth, Inc., F/K/A American Home **Products Corporation**; Wyeth Pharmaceuticals, Inc F/K/A Wyeth-Averst Pharmaceuticals, **Inc., A Division Of American Home Products Corporation**; and Boehringer Ingelheim Pharmaceuticals, Inc.,

C.A. No. 04cv11147-GAO

Defendants

## PLAINTIFFS' MOTION TO REMAND

Pursuant to 28 U.S.C. § 1447(c), plaintiffs hereby seek to remand this action to the Superior Court of the Commonwealth of Massachusetts, Middlesex County, where this action was originally filed. In support of this motion, plaintiffs state that the ground asserted for removal by defendants Wyeth, Inc. f/k/a American Home Products Corporation; and Wyeth Pharmaceuticals, Inc. f/k/a Wyeth-Ayerst Phamaceuticals, Inc., a Division of American Home Products Corporation (collectively referred to as "Wyeth"), is improper.

More specifically, defendant, Indevus Pharmaceuticals, Inc., f/k/a Interneuron Pharmaceuticals, Inc.("Indevus"), is a resident of Massachusetts and has not been

fraudulently joined. Wyeth cannot meet the high burden for fraudulent joinder as the

allegations in the complaint and supporting affidavits show that plaintiffs have far more than a colorable claims against Indevus.

In support of his motion, plaintiffs rely upon their consolidated memorandum filed in Amadeo, et al v. Indevus, et al, No. 04cv11039, and supporting documents. Individual affidavits will be supplied if deemed necessary.

In the event that his motion is granted, plaintiffs request that this Court issue an order requiring that the removing defendants pay plaintiffs' just costs and any actual expenses, including attorneys fees, incurred as a result of the removal.

> The Plaintiffs By their attorneys,

/s/ Michael S. Appel\_

Edward J. Barshak (BBO # 032040) Michael S. Appel (BBO # 543898) Samuel M. Furgang (BBO # 559062) Sugarman, Rogers, Barshak & Cohen, P.C. 101 Merrimac Street, 9<sup>th</sup> Floor Boston, MA 02114 (617) 227-3030

Samuel W. Lanham, Jr. (Motion to admit Pro Hac Vice filed) Cuddy & Lanham, P.A. 470 Evergreen Woods Bangor, ME 04401 (207) 942-2898

Neil D. Overholtz (Motion to admit Pro Hac Vice filed) Aylstock, Witkin & Sasser, P.L.C. 55 Baybridge Drive P.O. Box 1147 Gulf Breeze, FL 32562-1147 (850) 916-7450

Dated: July 1, 2004